IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8359 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI RANCHHODBHAI JETHAVA

Versus

STATE OF GUJARAT

Appearance:

MR LR PATHAN for Petitioner

MR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. The petitioner - Pravinbhai Ranchhodbhai Jethava came to be detained by virtue of an order passed by the District Magistrate, Bhavnagar on May 21, 2000 in exercise of powers conferred under sec. 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

2. The grounds of detention served on the petitioner indicate that the detaining authority took into consideration five offences registered against the detenu punishable under various provisions of the Indian Penal Code (IPC) and the Bombay Police Act. The detaining authority also took into consideration the statements of five anonymous witnesses, whose identity has not been disclosed by the detaining authority in exercise of power u/S. 9(2) of the PASA Act. Tha authority withheld the identity of these witnesses in exercise of powers u/S. 9(2) of the PASA Act after recording the satisfaction that these witnesses suffered from genuine fear from the detenu qua their person and property and, therefore, their identity is required to be withheld. After considering possibility of resorting to less drastic remedies, the authority came to a conclusion that it is not possible to resort to those remedies and that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti social activities which are detrimental to public order.

3. The order of detention is challenged in this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Pathan, learned advocate appearing for the petitioner, has emphasized on the fact that the sponsoring authority did not place all relevant papers before the detaining authority and the detaining authority has passed the order without consideration of relevant papers. The decision making process, therefore, is adversely affected which would vitiate the order of detention. In order to substantiate his argument, Mr. Pathan has drawn attention of this Court to the fact that the detaining authority has supplied the documents relied upon by it while passing the order. If these documents are seen, particularly the documents in relation to offence registered against the detenu, several relevant papers are not supplied and by way of necessary inference, are not considered by the detaining authority. Mr. Pathan has taken this Court through the abstract of the charge-sheet to indicate that relevant documents like Panchnama, statement of witnesses, etc. are not considered by the detaining authority. The decision making process of the detaining authority and conclusion of the authority that this is a fit case for detention under the PASA Act would, therefore, be vitiated. Mr. Pathan, therefore, urged that the petition may be allowed.

4. Mr. Bhatt, Ld. AGP has opposed this petition. He submitted that the documents relied upon by the detaining authority were supplied to the detenu and sufficiency or insufficiency of grounds for detention cannot be examined in such petition. He, therefore, urged that the petition may be dismissed.

5. Having regard to the rival side contentions, the fact remained undisputedly established that the detaining authority has taken into consideration the five offences registered against the detenu. All these offences are pending trial. The index of papers supplied to the detenu indicate that abstract of charge-sheet in all these cases were supplied to the detenu. If these charge-sheet abstracts are considered, they indicate that the prosecution has much more evidence than the material supplied by the sponsoring authority to the detaining authority for its consideration and in turn by the detaining authority to the detenu. The detaining authority has only considered what is supplied to it by the sponsoring authority. This is on a legitimate presumption that the detaining authority has supplied all the documents to the detenu upon which it has relied. The inference therefore, is that the detaining authority has not considered all relevant material while arriving at a satisfaction for he used to detain the detenu under PASA. The possibility of such material being in favour of the detenu cannot be ruled out. It may have weighed by the detaining authority and the detaining authority may have decided not to detain the detenu. The entire decision making process, therefore, stands vitiated. The present case is squarely covered by the principle laid down by the Apex Court in the case of A. Sowkath Ali v. Union of India & ors. reported in (2000) 7 S.C.C. 148. In that case it was observed that all documents which are relevant having bearing on the issue and which may affect the mind of the detaining authority should be placed before it. It is observed that though it is not necessary to place all documents which were being relied on for detention of another detenu even in an identical case, but once the sponsoring authority chooses to place any such documents relating to another co-detenu but does not place the other document which inherently correlates such documents and both together constitute a composite relevant fact, then non-placement of the other document would affect the subjective satisfaction of the detaining authority and would vitiate the detention order. In the instant case the sponsoring authority has not placed all relevant documents before the detaining authority which have an impact on the decision making process in the mind

of the detaining authority. Under the circumstances, the order of detention stands vitiated.

6. There is yet another ground which requires consideration which was also argued by Mr. Pathan. He has drawn attention of this Court to para. 2 of the grounds of detention wherein the detaining authority has observed that the detenu is not engaged in any respectable legal occupation. Mr. Pathan has drawn attention of this Court to the fact that it emerges from the statements of the anonymous witnesses as well as from the criminal cases that the petitioner runs a Pav Bhaji Stall. It is therefore to be accepted that the detaining authority has not properly considered the papers. This also would affect the decision making process and vitiate the order of detention. Petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar being No. DM/1/PASA/Case/29/2000 dated 21/5/2000 qua detenue - Pravinbhai Ranchhodbhai Jethava is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

[A.L. DAVE, J.]

PVR.